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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

KING MOUNTAIN TOBACCO, Inc.

No.

Plaintiff,

**COMPLAINT FOR REFUND OF
FEDERAL TOBACCO EXCISE
TAXES**

v.

26 U.S.C. § 7422

UNITED STATES OF AMERICA and the
United States of America DEPARTMENT OF
THE TREASURY,

Defendants.

INTRODUCTION

Plaintiff brings this civil action pursuant to 26 U.S.C. §7422 seeking a refund or credit of \$26,390,223.40 for federal Tobacco Excise Taxes paid to the Government.

I. FACTUAL ALLEGATIONS

1.A. Plaintiff is an Indian tribal corporation incorporated under the laws of the Yakama Nation with headquarters situated on tribal land within the Yakama Nation Reservation.

1.B. Plaintiff grows tobacco on tribal land within the Yakama Nation Reservation.

1.C. Plaintiff manufactures cigarettes at its industrial plant situated on tribal land within the Yakama Nation Reservation.

COMPLAINT
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1 1.C.1. The people of who would become members of plaintiff's tribe grew
2 tobacco within their territory prior to contact with immigrants and citizens of other nations.

3 1.C.2. Since Time Immemorial, the smoking of tobacco associated with
4 ceremonial or religious events was, and is, an integral part of Yakama culture.

5 1.D. Plaintiff has been assessed taxes of \$68,838,925.10 for cigarettes manufactured
6 between 2009 and 2013, plus interest and penalties.

7 1.D.1. Of such amount, plaintiff has paid defendant \$30,522,443.76.

8 1.E. Approximately 43% of such cartons were manufactured pursuant to orders placed
9 by tribal retailers licensed by the Yakama Nation who exclusively engage in trade on tribal land
10 within the Yakama Nation Reservation.

11 1.F. 2,614,745 cartons were manufactured for delivery to such tribal retailers during the
12 period 2009 to 2013.

13 1.F.1. The Yakama Nation imposes a tax upon each such carton of cigarettes.

14 1.F.2. Such tax is expended by the Yakama Nation upon the death of a member
15 of the tribe to their survivor for the deceased tribal member's funerary and burial religious
16 ceremony costs.

17 1.G. The federal excise tax upon such product is \$10.066 per carton of 200 cigarettes.

18 1.H. Of the amount stated in paragraph 2.G. above, \$26,320,023.20 was assessed by
19 defendant upon products manufactured for use and sale by members of the Yakama Nation on
20 the Yakama Reservation.

21 1.I. Plaintiff has paid \$30,522,443.76 in taxes to defendant.

22 1.J. From 2009 through 2013, Plaintiff manufactured 6,974 cartons of cigarettes that
23 were distributed without cost to enrolled members of the Yakama Nation to be used in
24 connection with tribal traditional and religious ceremonies.

1 1.J.1. Any Yakama Nation tribal tax imposed upon such products is expended
2 by the Yakama Nation upon the death of a member of the tribe to their survivor for the
3 deceased tribal member's funerary and burial religious ceremony costs.

4 1.J.1. On information and belief, cigarettes and tobacco products manufactured
5 by plaintiff for tribal ceremonial use are composed 100% of tobacco grown on tribal land
6 within the Yakama Reservation.

7 1.J.2. The federal tobacco excise tax upon 6,974 cartons of cigarettes totals
8 \$70,200.28.

9 1.K. The taxes imposed by defendant and collected from plaintiff are not subject to the
10 tax if the product is manufactured for exportation to be sold outside the United States.

11 1.K.1. 57% of cigarettes manufactured by plaintiff within the Yakama Nation
12 Reservation are exported outside the Yakama Nation Reservation for sale, use or consumption
13 outside the territorial limits of the Yakama Nation Reservation.

14 1.K.2. From January 1, 2009 through December 31, 2013, 10,694,544 cartons
15 were manufactured by plaintiff and exported to States outside the Yakama Nation Reservation.

16 1.K.3. From January 1, 2009 through December 31, 2013, 4,000,374 cartons of
17 cigarettes were manufactured by plaintiff and exported to tribal reservations outside the
18 Yakama Nation Reservation.

19 20 II. JURISDICTION AND VENUE

21 2.A. This Court has jurisdiction under U.S.C. Section 7422, as plaintiff is a taxpayer
22 suing for a refund of taxes wrongfully paid to defendant. The court further has jurisdiction
23 under 28 U.S.C. Section 1331 in that this case involves a federal question arising under the
24 Constitution, Laws or Treaties of the United States of America.

1 5.C. Imposition and collection of a federal excise tax on tobacco from plaintiff
2 constitutes discrimination in violation of 42 U.S.C. 1981 and 1982 in that defendant does not
3 impose such a tax upon other manufacturers who product tobacco products for the export
4 market.

5
6 PRAYER FOR RELIEF

7 WHEREFORE, Plaintiffs pray that this Court:

8 A. Require defendant to refund to plaintiff or credit plaintiff with payment of
9 \$26,320,023.20 for taxes paid on cigarettes manufactured for the exclusive use of
10 tribal members within the Yakama Nation Reservation.

11 B. Require defendant to refund to plaintiff or credit plaintiff with payment of
12 \$70,200.28 for taxes imposed by defendant on cigarettes and/or tobacco products
13 manufactured for religious or ceremonial use by members of the Yakama Nation.

14 D. Award plaintiffs their costs and reasonable attorneys fees; and

15 E. Grant such other and further relief as is necessary and proper and fair and equitable.

16 DATED this 25th day of September, 2020.

17 Respectfully submitted,
18 KING MOUNTAIN TOBACCO, Inc.
19 By:

20 S/Jack W. Fiander
21 Jack W. Fiander, WSBA # 13116
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